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December 18, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: June 23, 2006

Case Number: TSO-0402

This Decision concerns the eligibility of XXXXXXXX XX XXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual should be granted an access authorization. As set forth in this Decision, I have determined that the individual should not be granted a security clearance at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual requested a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that her request for a DOE access authorization was being denied pending the resolution of certain derogatory information that created substantial doubt regarding her eligibility. This derogatory information is described in a Notification Letter issued to the individual on April 3, 2006, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l). More specifically, the Notification Letter alleges that the individual has: 1) "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]"; 2) "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse"; and 3) "[e]ngaged in unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause [her] to act contrary to the best interests of national security." 10 C.F.R. §§ 710.8(h), (j) and (l). (Criterion H, Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

In reference to Criteria H and J, the Notification Letter states on February 10, 2006, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual as suffering from Substance Abuse, Alcohol (Alcohol Abuse), based upon diagnostic criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR). According to the DOE Psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual's judgment or reliability. In addition, the DOE Psychiatrist found that, in the past, the individual has been a user of alcohol habitually to excess. In support of these allegations, the Notification Letter indicates that the individual has had eleven alcohol-related arrests, from October 1982 to February 2004. These arrests also form the basis for DOE Security's concerns under Criterion L.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on June 23, 2006, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On June 28, 2006, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, DOE Security called the DOE Psychiatrist as its sole witness. The individual testified on her own behalf, and also called her manager, her supervisor, a close friend and her living companion. The transcript taken at the hearing will be hereinafter cited as "Tr." Documents that were submitted during this proceeding by DOE Security constitute exhibits to the hearing transcript and will be cited as "DOE Exh.". The individual did not tender any exhibits.

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in August 2002 and submitted a request for a security clearance in March 2003, by the filing of a Questionnaire for National Security Positions (QNSP). The individual's QNSP and background investigation revealed that the individual had a number of arrests in instances where the individual's consumption of alcohol was involved, including: 1) six arrests for Driving While Intoxicated (DWI), in 1982, 1992, 1993, two in 1997, and in 1999; 2) an arrest in 1997 on a charge of Domestic Violence, Battery; and 3) two separate arrests in 1998, for Larceny and Aggravated Assault. Following the filing of her QNSP and prior to completion of her background investigation, the individual was the subject of two additional alcohol-related arrests, in November 2003 and in February 2004, both on charges of Battery Against a Household Member.

On April 26, 2005, the individual was summoned by DOE Security for a Personnel Security Interview (PSI), principally to discuss the individual's history of alcohol use and the circumstances of the most recent arrests in November 2003 and February 2004. During the PSI, the individual acknowledged a history of substantial alcohol use and her many alcohol-related arrests. The individual received alcohol treatment in 1991, and had a few years of sobriety before returning to binge drinking, consuming from 12 to 18 beers on some occasions. According to the individual, her more recent excessive use of alcohol stemmed from tumultuous relationships and domestic altercations with two domestic partners whom the individual lived with during different time periods, from the mid-1990's to 2002 (Partner #1) and from 2003 to 2004 (Partner #2). The individual recounted that while she has had periods of sobriety during these times, she has typically returned to drinking when angry or depressed over difficulties in her relationships.

In February 1999, the individual attempted to commit suicide by slashing her wrists, following an altercation with Partner #1. Later that year, in April 1999, the individual again participated in an alcohol treatment program and began an approximately 3-year period of sobriety. However, she had a relapse in 2002. At this time, the individual sought psychiatric treatment and was placed on anxiety and anti-depressant medication. The individual ended her relationship with Partner #1 some time in 2002, and moved in with Partner #2 in early 2003.

The individual was again abstinent for approximately 16 months until November 2003, when she consumed approximately four beers after becoming angry with Partner #2. According to the individual, she and Partner #2 got into a heated argument and the

individual sought to get some of her things from the house and leave. However, Partner #2 locked the individual out of the house when she went to her car to get a cell phone. The police were summoned after the individual broke a window to get back into the house. The individual was arrested when the police arrived on the scene. The individual and Partner #2 reconciled following this incident but got into another domestic dispute in February 2004. On this occasion, the individual had consumed approximately four beers and Partner #2 had also been drinking when they got into an argument. According to the individual, Partner #2 jumped on her and the individual pushed Partner #2 and pulled her hair in order to defend herself. However, Partner #2 called the police claiming that the individual had struck her. The individual and Partner #2 separated following this incident.

DOE Security determined that the security concerns associated with the individual's consumption of alcohol were unresolved by the PSI and referred the individual to the DOE Psychiatrist. The DOE Psychiatrist reviewed the individual's personnel security file and performed a psychiatric interview and evaluation of the individual on February 10, 2006. The individual reported to the DOE Psychiatrist that she had consumed alcohol on twelve occasions during the preceding year, drinking an average of six to eight beers, and had become intoxicated on three of those occasions. The individual further stated that her last consumption of alcohol was at Christmastime in 2005. In his report issued on February 11, 2006, the DOE Psychiatrist concluded that the individual meets the DSM-IV TR criteria for Substance Abuse, Alcohol, on the basis of her many alcohol-related arrests. The DOE Psychiatrist further states that the individual's Alcohol Abuse is an illness or mental condition which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In addition, the DOE Psychiatrist determined that the individual was a user of alcohol habitually to excess from 1982 to 1988, and from 1990 to 2000.

The DOE Psychiatrist recommended either of the following as evidence of rehabilitation from her Alcohol Abuse: 1) total abstinence from alcohol and non-prescribed controlled substances for three years with 300 hours of attendance at Alcoholics Anonymous (AA), with a sponsor, over three-year period, or 2) total abstinence for three years with satisfactory completion of a professionally led, alcohol treatment program, with aftercare, over a minimum of six months. As adequate evidence of reformation, the DOE Psychiatrist recommended two to three and a half years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if she does not.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond

a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual should not be granted an access authorization at this time since I am unable to conclude that such granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Condition, Excessive Use of Alcohol

(1) Derogatory Information

The DOE Psychiatrist diagnosed the individual with Alcohol Abuse based upon diagnostic criteria set forth in the DSM-IV TR. DOE Exh. 6 at 10-11. The DSM-IV TR generally provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. See *id.* In the case of the

individual, the DOE Psychiatrist determined that the individual met the third criterion (Criterion A3) based upon the individual's eleven alcohol-related arrests from 1982 to 2004 . Id. The DOE Psychiatrist testified "that's about as strong evidence as you can get for that criterion. It simply says recurrent alcohol related legal problems." Tr. at 112. At the hearing, the individual acknowledged her history of excessive drinking and many alcohol-related arrests. Tr. at 57-60.

I therefore find that DOE Security properly invoked Criteria H and J in denying the individual's request for a security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., Personnel Security Hearing, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0014, *aff'd*, Personnel Security Review, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. Id. Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE Security.

(2) Mitigating Evidence

The individual acknowledges that she has used alcohol excessively in the past and has often made bad decisions while under the influence of alcohol. See Tr. at 59-62, 93-95. However, the individual attributes her alcoholism to her self-medication of depression brought on by two dysfunctional relationships with her past domestic partners. Tr. at 77-78, 87, 94, 97. According to the individual, "as long as I'm dealing with my depression issues, I don't have the urge to drink." Tr. at 92. The individual first went on Zoloft, an anti-depressant medication, during the 2001-2002 time frame. Tr. at 66; DOE Exh. 8-9. The individual discontinued taking the medication for a time in 2003, believing that the dosage she was prescribed was too high. Tr. at 77-78. The individual was not drinking during this time and had achieved approximately 16 months of abstinence. Id. However, the individual began seeing a new psychiatrist after her relapse and two arrests in November 2003 and February 2004, who again prescribed Zoloft. According to the individual, this psychiatrist has placed her on the proper dosage of Zoloft and "now I feel level . . . everything is great, everything is fine." Tr. at 78.

At the hearing, the individual testified that she drank very little during the year following her last alcohol-related arrest in February 2004, and was intoxicated perhaps

two times. Tr. at 76.^{2/} The individual stopped drinking altogether in December 2005, after an occasion during the Christmas holiday when she felt depressed and consumed four beers. Tr. at 77; see DOE Exh. 6 at 6. The individual's present domestic partner corroborated that the individual has consumed no alcohol since December 2005. Tr. at 44. In early 2006, the individual attended a few AA meetings but did not continue in the 12-step program. The individual explained that "AA has never worked for me. I don't feel comfortable there . . . [Y]ou have to have a really big higher power to base AA off of, and I don't." Tr. at 67; see also Tr. at 83 ("I don't connect with AA."). However, the individual obtained a prescription for Antabuse^{3/} from her psychiatrist, which she takes on a daily basis to ensure that she will not be tempted to drink. Tr. at 89-90. Apart from taking Antabuse, however, the individual is receiving no alcohol treatment. Instead, the individual is continuing to see a psychiatrist for her depression, and receiving hormonal treatments from a gynecologist to maintain her mood stability. Tr. at 81-83.

The individual testified that she is now in a stable relationship with her present domestic partner, and thus free from the stressors that led her to drink excessively in the past. Tr. at 94-95. The individual's living companion corroborated this testimony regarding their relationship, and expressed her opinion that the individual is now committed to maintaining her sobriety. Tr. at 44, 52, 55. Finally, the individual's manager, supervisor and close friend uniformly testified that they consider the individual to be honest, dependable and trustworthy. See Tr. at 11-12, 16-17, 20, 38.

The DOE Psychiatrist testified last at the hearing, after hearing the testimony of the individual and her witnesses. The DOE Psychiatrist commended the individual on achieving one year of sobriety at the time of the hearing, and her commitment to maintaining her sobriety by taking Antabuse. See Tr. at 110, 116. The DOE Psychiatrist also deemed it positive that the individual apparently has her depression under control. Tr. 117. Notwithstanding, the DOE Psychiatrist noted that the individual has a long history of drinking problems, nearly 25 years during which she has had long periods of sobriety only to return to binge drinking, leading to poor judgment and eleven alcohol-related arrests. Tr. at 109. Thus, the DOE Psychiatrist expressed his opinion that the individual had not yet achieved adequate rehabilitation

^{2/} I note that this testimony is somewhat at odds with the information provided to the DOE Psychiatrist, as summarized in his report. According to the DOE Psychiatrist, the individual stated that she consumed an average of six to eight beers approximately twelve times during the year preceding the psychiatric interview on February 1, 2006, and became intoxicated on three of those occasions. See DOE Exh. 6 at 6-7.

^{3/} Antabuse is a prescription medication that when ingested causes severe physical discomfort if alcohol is subsequently consumed.

or reformation, and adhered to the recommendations stated in his report that the individual requires three years of sobriety coupled with a treatment program to demonstrate adequate rehabilitation, or five years of abstinence in the absence of treatment to demonstrate reformation from her Alcohol Abuse. Under the circumstances of this case, where the individual has only nine months of sobriety at the time of the hearing and is not in alcohol treatment, I find it appropriate to defer to the opinion of the DOE Psychiatrist. Accordingly, I find that the individual has not yet overcome the security concerns associated with her past use of alcohol and diagnosis of Alcohol Abuse. See Personnel Security Hearing, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, Personnel Security Review, 28 DOE ¶ 83,016 (2001); Personnel Security Hearing, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); cf. Personnel Security Hearing, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

B. Criterion L, Unusual Conduct

I find that DOE Security properly raised security concerns of unusual conduct on the part of the individual under Criterion L, in view of the individual's eleven alcohol-related arrests. As set forth above, I find that the individual has not sufficiently mitigated the security concerns associated with her past use of alcohol and diagnosis of Alcohol Abuse. I therefore find, correspondingly, that the individual has not yet overcome the concerns of DOE Security under Criterion L.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h), (j) and (l) in denying the individual's request for a security clearance. For the reasons I have described above, I find that the individual has failed to mitigate the security concerns associated with her diagnosis of Alcohol Abuse, history of excessive alcohol use and many arrests relating to her use of alcohol. I am therefore unable to find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's request for an access authorization should not be granted at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: December 18, 2006